
(2015) 09 AHC CK 0049
In the Allahabad High Court
Case No : Habeas Corpus No. 5 of 2015

Manoj Jaiswal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Constitution of India, 1950 — Article 22(5)
National Security Act, 1980 — Section 10, 11, 12, 3, 3(1)(a)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2015) 09 AHC CK 0049

Hon'ble Judges : Dinesh Maheshwari, J; Rakesh Srivastava, J

Bench : Division Bench

Advocate : B.K. Shukla and P.K. Rai, for the Appellant; Vimal Kumar Srivastava, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Srivastava, J—This is a petition through jail under Section 226 of the Constitution for issuance of a writ of Habeas Corpus by Manoj Jaiswal, who has been detained by an order of detention dated 11.10.2014 passed by the District Magistrate, Barabanki, under sub-section (2) of section 3 of the National Security Act, 1980 (for brevity "Act") with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

2. The grounds of detention, as communicated to the detenu by the District Magistrate on the basis of which the detention order was passed, are as follows:

3. The detention order as well as grounds of detention was served upon the petitioner. The District Magistrate sent a report to the State Government about the passing of detention order together with the grounds of the detention and all the particulars bearing on the same. The said report and the particulars were considered by the State Government and it approved of the detention order under sub-section (4) of section 3 of the Act and sent a report to the Central Government under section 3(5) of the Act. The State Government forwarded the

case of the petitioner to the Advisory Board in due course under section 10 of the Act along with detention order together with the grounds of detention. The representation made by the petitioner to the State Government was also placed before the Advisory Board. The Board considered the material placed before it, including the representation of the petitioner and after hearing the petitioner in person, sent its report to the State Government under sub-section (1) of section 11 of the Act. According to the Board there was sufficient cause for detention of the petitioner. In pursuance of the opinion expressed by the Advisory Board the State Government, in exercise of its powers under sub-section (1) of section 12 of the Act, confirmed the order for detention of the petitioner and the same was communicated to the petitioner.

4. In response to the rule nisi, Sri Yogeshwar Ram Mishra the District Magistrate, Barabanki, who had passed the impugned order, has filed a counter affidavit to which the petitioner has filed his rejoinder affidavit. In his counter affidavit, the District Magistrate has explained the circumstances which led to the issuance of the detention order. In the counter affidavit, the allegations made by the detenu have been controverted and it has been unequivocally stated that the Constitution safeguards of Article 22(5) and that of section 8 of the Act, have been strictly complied with.

5. The detention order was passed by the District Magistrate on 11.10.2014 and at that point of time the petitioner was under detention in District Jail Barabanki on the basis of an FIR dated 15.01.2014 lodged by Purushottam Lal Yadav - the brother of the deceased in Case Crime No. 40 of 2014, under Sections 147, 148, 149, 307, 302 IPC lodged at Police Station Kotwali Nagar, District Barabanki. It may be mentioned, at this stage, that the detenu has since been granted bail on 23.07.2015, but in view of the order of detention, he has not been released.

6. The contentions raised by Sri P.K. Rai, learned counsel for the petitioner are three-fold:

a. The grounds, at the worst, do no more than to suggest a possible "law and order" situation and not a "public order" situation and therefore the detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified.

b. In the absence of any past history, the detention of the petitioner on the solitary incident, referred to in the ground of detention, was totally unwarranted.

c. The petitioner, who was in jail when the detention order was passed, had not moved any bail application and as such there was no apprehension of breach of public order from him.

In support of his submissions, the learned counsel has placed reliance upon the cases reported in Mrs. T. Devaki Vs. Government of Tamil Nadu and others, AIR 1990 SC 1086 : (1990) CriLJ 1140 : (1990) 2 Crimes 1 : (1990) 1 SCALE 389 : (1990) 2 SCC 456 : (1990) 1 SCR 836 , Huidrom Konungjao Singh Vs. State of

Manipur and Others, AIR 2012 SC 2002 : (2012) CriLJ 2935 : (2012) 5 SCALE 628 : (2012) 7 SCC 181 : (2012) AIRSCW 3043 : (2012) 4 Supreme 151 , Yumman Ongbi Lembi Leima Vs. State of Manipur and Others, AIR 2012 SC 321 : (2013) 115 CLT 392 : (2012) 1 JCC 531 : (2012) 1 JT 11 : (2012) 1 RCR(Criminal) 514 : (2012) 1 SCALE 2 : (2012) 2 SCC 176 , Yumman Ongbi Lenbi & Ors. v. State of Manipur & Ors.

7. Sri R.K. Diwedi, however, relying upon the records of the proceedings and the affidavit filed by the detaining authority, has supported the order of detention.

8. We have heard Sri P.K. Rai, learned counsel for the petitioner and Sri R.K. Dwivedi, learned Government Advocate and perused the record.

9. The distinction between the concept of public order and that of law and order has been adverted to by the Apex Court in a catena of decisions. The question whether a man has only committed a breach of law and order or acted in a manner leading to disturbance of public order is a question of degree of the reach of the act upon society is no more *res integra*. In the case reported in *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, AIR 1966 SC 740 : (1966) CriLJ 608 : (1966) 1 SCR 709 it was observed that the contravention "of law" always affects "order" but before it could be said to affect "public order", it must affect the community or the public at large. One has to imagine three concentric circles, the largest representing "law and order", the next representing "public order" and the smallest representing "security of State". An act may affect "law and order" but not "public order", just as an act may affect "public order" but not "security of the State".

10. In paragraph 3 of the case reported in *Arun Ghosh Vs. State of West Bengal*, AIR 1970 SC 1228 : (1970) CriLJ 1136 : (1970) 1 SCC 98 : (1970) 1 SCC(Cri) 67 : (1970) 3 SCR 288 it was held as follows:

"Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished, from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may

not differ from another but in its potentiality it may be very different."

In the same paragraph the Apex Court has held as follows:

"It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as *ordre publique*. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr. Ram Manohar Lohia's case examples were given by Sarkar and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

11. The principle enunciated above has been followed by the Apex Court in all subsequent cases. It is, therefore, necessary in each case to examine the facts to determine as to whether the act referred to in the grounds of detention falls in the realm of law and order" problem or it had the reach and potentiality so deep, so as to disturb the society, to the extent of causing a general disturbance of public tranquillity.

12. It would appear from the ground of detention that the petitioner and his associates attacked Arvind Yadav and his associate with firearms in the open market in broad daylight which resulted in the death of Arvind Yadav. It has been further stated that the above act of the petitioner and his associates created terror and panic amongst the people of the locality and thereby disturbed public order. The daring act of the petitioner in a busy market, in our opinion, affected public order and not merely law and order. The said act, certainly, caused terror and panic in the locality and affected those who watched the whole thing in fear as helpless spectators. The act in question adversely affected the even tempo of life of the community and caused a general disturbance of public tranquility

13. On behalf of the petitioner, a reference has been made to T. Devaki's case (*supra*). The petitioner in that case had attacked the Minister in a seminar. He threw a knife towards the minister with an intention to kill him but he missed the

target and fell down at the stage. The police caught hold him and those who accompanied him were also overpowered by the police and consequent to the conduct of the petitioner the proceeding of the seminar was interrupted for "only a while" and since the proceedings of the seminar were interrupted for a while it was held that the petitioner's activity in that case did not and could not affect public peace and tranquility. The decision is thus of no help to the petitioner.

14. We now come to the second submission made by the learned counsel for the petitioner that detention on a solitary incident, referred to in the ground of detention, was totally unwarranted.

15. It is also settled that a solitary act of omission or commission can be taken into consideration, by the detaining authority to pass an order of detention if the reach, effect and potentiality of the act is such that it disturbs public tranquillity by creating terror and panic in the society or a considerable number of people in the specified locality where the act is alleged to have been committed.

16. In paragraph 14 of the case reported in *Alijan Mian Vs. District Magistrate, Dhanbad and Others*, AIR 1983 SC 1130 : (1983) CriLJ 1649 : (1983) 2 Crimes 760 : (1983) 2 SCALE 280 : (1983) 4 SCC 301 : (1983) 3 SCR 939 the Apex Court has held as follows:

"14. Now the question arises whether the two incidents were sufficient for the detaining authority to initiate proceedings for preventive detention. It is for the detaining authority to have the subjective satisfaction about the apprehension of the breach of the public order from the incidents mentioned above. Even one incident may be sufficient to satisfy the detaining authority. It all depends upon the nature of the incident. In the case in hand the detaining authority was fully satisfied that there was apprehension of breach of public order from the petitioners in case they were bailed out, of which there was every likelihood. This contention in our opinion has no force."

17. In the case reported in *Smt. Bimla Rani Vs. Union of India (UOI) and Others*, (1989) 3 Crimes 578 : (1989) 3 JT 737 : (1989) 2 SCALE 660 : (1989) 4 SCC 509 : (1989) 1 SCR 241 Supp the Apex Court opined as follows:

"8. It is true that the incident on 13-4-1989 was a solitary one so far as the detenu was concerned, but the question is whether the incident had prejudicially affected the public order. In other words, whether it had affected the even tempo of life of the community. As observed in *Alijan Mian* case, it is for the detaining authority to have the subjective satisfaction about the apprehension of the breach of the public order and that even one incident may be sufficient to satisfy the detaining authority in that regard depending upon the nature of the incident. It is not disputed by Mr. Lalit that a single incident may disturb the tranquillity and the even tempo of life of the community.

18. In the case reported in *Attorney General for India and Others Vs. Amratlal Prajivandas and Others*, AIR 1994 SC 2179 : (1995) 83 CompCas 804 : (1995)

CriLJ 426 : (1994) 3 JT 583 : (1994) 2 SCALE 925 : (1994) 5 SCC 54 : (1994) 1 SCR 1 Supp : (1994) 74 TAXMAN 469 , though the matter related to the COFEPOSA, a nine judges Bench of the Apex Court has inter alia held as under:-

"Though ordinarily one act may not be held sufficient to sustain an order of detention, one act may sustain an order of detention if the act is of such a nature as to indicate that it is an organised act or a manifestation of organised activity. The gravity and nature of the act is also relevant. The test is whether the act is such that it gives rise to an inference that the person would continue to indulge in similar prejudicial activity."

19. In the ground of detention, the detaining authority on the basis of relevant and cogent material, has elaborately stated the effect of the incident. The detaining authority has categorically stated that on account of the incident fear and terror was spread in the hearts of the public in the market. In our opinion, even though it was solitary incident but in the circumstances, it was sufficient for the detaining authority to arrive at a finding that the even tempo of life had been disturbed which had prejudicially affected the public order. In view of the above the second submission made on behalf of the petitioner also cannot be upheld.

20. This leads us to the third contention made on behalf of the petitioner. The question as to whether a person who is in jail can be detained under detention law has been the subject-matter of consideration before the Apex Court time and again, and it has been consistently held in such cases that there was no law in passing a detention order even against a person under custody, however, at the time of passing the detention order, the detaining authority should be aware that the detenu was already in custody and was likely to be released on bail. The conclusion that the detenu could be released on bail cannot be ipse dixit of the detaining authority and once it is established that the detaining authority was conscious of the said fact, its subjective satisfaction based on materials, normally, should not be interfered with.

21. In T.P. Moideen Koya Vs. Government of Kerala and Others, (2004) 96 ECC 369 : (2004) 8 JT 383 : (2004) 8 SCALE 364 : (2004) 8 SCC 106 the Apex Court held as follows:

"19. The very object of passing a detention order being to prevent the person from acting in any manner prejudicial to maintenance of public order or from smuggling goods or dealing in smuggled goods, etc., normally there would be no requirement or necessity of passing such an order against a person who is already in custody in respect of a criminal offence where there is no immediate possibility of his being released. But in law there is no bar in passing a detention order even against such a person if the detaining authority is subjectively satisfied from the material placed before him that a detention order should be passed. A Constitution Bench in Rameshwar Shaw v. District Magistrate held as under: (SCR p. 929)

"As an abstract proposition of law, there may not be any doubt that Section 3(1)

(a) does not preclude the authority from passing an order of detention against a person whilst he is in detention or in jail; but the relevant facts in connection with the making of the order may differ and that may make a difference in the application of the principle that a detention order can be passed against a person in jail."

20. In *Vijay Kumar v. State of J&K* it was held: (SCC p. 48, para 10)

"If the detenu is already in jail charged with a serious offence, he is thereby prevented from acting in a manner prejudicial to the security of the State. Maybe, in a given case there yet may be the need to order preventive detention of a person already in jail. But in such a situation the detaining authority must disclose awareness of the fact that the person against whom an order of preventive detention is being made is to the knowledge of the authority already in jail and yet for compelling reasons a preventive detention order needs to be made."

22. A perusal of the grounds of detention would show that the detaining authority was fully aware of the fact that the detenu was actually in jail custody and there was material before him to believe that there was real possibility of his release on bail. The learned counsel for the petitioner has strenuously contended that the petitioner had not moved any bail application before this Court as alleged in the grounds of detention and has thereby questioned the observations made by the detaining authority that the detenu was likely to be released on bail. The learned counsel for the petitioner has, however, candidly accepted that a notice for filing bail application on behalf of the petitioner had been given in the office of the Government Advocate.

23. For filing a bail application under Chapter XVIII Rule 8 of the Allahabad High Court Rules, at least 10 days notice is required to be given. As soon as notice is given, the intention to move the bail application is clear and the State cannot presume negative that despite giving the notice bail application would not be moved. Therefore, the authorities concerned cannot be faulted in presuming that the petitioner was making attempt to get himself released on bail.

24. In habeas corpus writ petition No. 2690 of 2015, *Robin Tyagi versus Union of India & Ors.* a Division Bench of this court had the occasion to consider this aspect of the matter. The Division Bench held as follows:

"Sri Sudhir Mehrotra, learned counsel for the petitioner, contends that the grounds of detention reply non-application of mind in as much as the bail was granted in case Case Crime. No. 200 of 2014 by the High Court on 1.8.2014, but grounds of detention could not have proceeded on such a presumption. This has been countered by the learned A.G.A. clearly contending that a bail application is moved under Chapter XVIII Rule 8 of the Allahabad High Court Rules wherein at least 10 days notice is required to be given. The notice was given and then the bail application was filed on 30.7.2014. Thus, the State will be presumed to have knowledge about the said bail application having been filed an attempt being

made by the petitioner to get himself released on bail. The aforesaid contention of the learned A.G.A. appears to be correct, and therefore has to be accepted."

25. In support of the third contention learned counsel for the petitioner has placed reliance upon the case of Huidrom Konungjao Singh (supra). In the said case the detention order passed against the petitioner of that case, who was in jail, was set aside. In that case no bail application, whatsoever, was moved on behalf of the petitioner and as such there was no possibility of the accused being released from jail custody accordingly the detention order was set aside. That is not the case here. Thus, the petitioner does not derive any benefit from the case of Huidrom Konungjao Singh (supra). The case of Yumman Ongbi Lenbi (supra) on which reliance has been placed is also of no help to the petitioner. In the said case the detention order was passed after almost 12 years after the last FIR was filed against the petitioner of that case and it was held that there was no live link of the earlier incident and incident in respect of which the detention was passed.

26. In view of the above, the third contention raised in behalf of the petitioner also fails.

27. For the foregoing discussion, we find no force in any of the contentions raised on behalf of the petitioner. The petition is accordingly dismissed.